

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

BARBRA HARTBARGER,	X	
KRISTINA HARTBARGER, and	X	
JESSICA HARTBARGER,	X	
Individually and o/b/o THE ESTATE	X	
OF KEVIN LEE HARTBARGER	X	
	X	CIVIL NO. 1:15-CV-201
VS.	X	
	X	
UNITED STATES OF AMERICA	X	JURY DEMAND

PLAINTIFFS' ORIGINAL COMPLAINT

NOW COME, **BARBRA HARTBARGER, KRISTINA HARTBARGER, and JESSICA HARTBARGER, Individually and o/b/o THE ESTATE OF KEVIN LEE HARTBARGER,** hereinafter referred to as Plaintiffs, complaining of the UNITED STATES OF AMERICA, herein referred to as Defendant and for cause of action and would show the following:

I.
PARTIES, JURISDICTION AND VENUE

1.1. This is a medical malpractice case.

1.2. Plaintiffs **BARBRA HARTBARGER, KRISTINA HARTBARGER AND JESSICA HARTBARGER** live at 1704 Possum Trail, Harker Heights, TX 76548 within the jurisdiction of this Court.

1.3. Defendant United States of America may be served with process in accordance with Rule 4(i) of the Federal Rules of Civil Procedure by serving a copy of the Summons and Complaint on Tom Berry, the United States Attorney for Austin Division, Western District of Texas, Austin

Division, U.S. District Clerk's Office, U. S. Courthouse, 200 W. 8th St., Austin, Texas 78701 to the attention of the Divisional Office Manager, and by serving a copy of the Summons and Complaint on Eric Holder, Attorney General of the United States of America, by certified mail, return receipt requested, at the Attorney General's Office, 10th and Constitution Avenue, N.W., Washington, D.C. 20530, to the attention of the Civil Process Clerk.

1.4. This action against the United States of America arises under the Federal Tort Claims Act and this Court has jurisdiction pursuant to 28 U.S.C. §§ 1346(b) and 1347.

1.5. Venue is proper in this District because part of the cause of action accrued and continues to accrue in this District. The Austin Division is convenient venue for this case.

1.6. Plaintiff hereby pleads that at all times relevant to this lawsuit that all physicians and nurses attending to Kevin Lee Hartbarger were employees of the United States of America and for purposes of and subject to the scope, coverages, and protections of the Federal Tort Claims Act afforded governmental employee health care providers.

II. FACTS

2.1 Kevin Hartbarger, deceased was seen at Central Texas Healthcare System of the V.A. for depression, anxiety, PTSD and substance abuse on July 31 and August 1, 2012.

2.2 In phone calls to the Central Texas VA on July 31, 2012 on that date Mr. Hartbarger went to the Central Texas VA and expressed suicidal thoughts and communicating significant risk factors for suicide. Mr. Hartbarger was discharged in an involuntary hold was not sought by staff at the VA.

2.3 Kevin Lee Hartbarger went to the Central Texas VA again on August 1, 2012. Again, questioning by staff at Central Texas VA showed that he had significant risk factors for suicide. Again, he was not kept as an inpatient.

2.4 Kevin Lee Hartbarger hanged himself shortly after leaving the VA on August 1, 2012 and died on August 2, 2012.

III.

CAUSES OF ACTION AGAINST THE UNITED STATES OF AMERICA

3.1 Plaintiffs contend that agents and employees of the United States of America were negligent in failing to timely diagnose suicidal behavior and obtain involuntary hold to allow for treatment. Plaintiff further contends that those employees were negligent in failing to timely obtain a Court Order to hold Mr. Hartbarger for treatment to prevent his suicide.

IV.

DAMAGES

4.1 Damages due to **KEVIN LEE HARTBARGER'S** death is a direct result of the negligence alleged herein. **KEVIN LEE HARTBARGER** died as a result of suicide. He incurred medical expenses between August 1, 2012 and August 2, 2012 related to treatment for suicide as well as funeral expenses.

4.2 As a result of the negligence alleged herein, Plaintiff **BARBRA HARTBARGER** has suffered and continues to suffer from loss of earning and earning capacity including future loss of earning capacity from **KEVIN LEE HARTBARGER**, mental anguish past and future. These damages are compensable to **BARBRA HARTBARGER** in the amount of \$5,000,000.00.

4.3 Plaintiffs **JESSICA HARTBARGER** and **KRISTINA HARTBARGER** are the surviving daughters of **KEVIN LEE HARTBARGER** and they have suffered from grief and mental anguish, loss benefits of the parent/child relationship, and lost contributions of the pecuniary nature, which damages have been sustained in the past and will with all probability continue to be sustained in the future. These damages are compensable to **JESSICA HARTBARGER** and **KRISTINA HARTBARGER** in the amount of \$5,000,000.00.

4.4 Because the injuries and resulting damages of which complaint is made were proximately caused by the negligence of the employees of The United States of America, while acting in the scope of their office of employment under circumstances where The United States, if a private person, would be liable to the Plaintiff in the same manner and to the same extent as an individual, The United States is financially responsible and liable for the damages to the Plaintiff alleged herein.

V.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays for a Jury trial and that on final hearing hereof, Plaintiff have judgment against Defendant, for whatever sums of money they may show themselves justly entitled, together with prejudgment and post judgment interest as provided by law, for interest on the judgment at the highest legal rate, for exemplary damages, for costs of suit, and for such other and further relief to which Plaintiffs may show themselves justly entitled, either at law or in equity.

Respectfully submitted,

WINCKLER & HARVEY, L.L.P.

4407 Bee Caves Road, Bldg. 2, Suite 222

Austin, Texas 78746

512/306-1800

512/306-9442 (FAX)

E-Mail: reedteck@wincklerharvey.com

By: /s/Reed Teckenbrock

REED TECKENBROCK

State Bar No.: 00794724

ATTORNEYS FOR PLAINTIFFS

Dated: 03/12/2015